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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,397	08/23/2001	Jason Benfield	AUS920010427US1	9831
35525	7590	05/03/2005	EXAMINER	
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			JACOBS, LASHONDA T	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,397

Applicant(s)

BENFIELD ET AL.

Examiner

LaShonda T. Jacobs

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is in response to Applicants' Amendment/Request for Reconsideration filed on February 7, 2005. Claims 3, 5, 7, 8, 12, 20, 22, 24, 25, 29 and 36 have been amended. Claims 1-36 are presented for further examination.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims **18-36** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 18-36 are not limited to tangible embodiments. The medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g. [floppy disc, CD-ROMS] and intangible embodiments (e.g. [software])). As such, the claims are not limited to statutory subject matter and therefore are non-statutory.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson et al (hereinafter, "Nelson", 5,835,720).

As per claims 1, 18 and 35, Nelson discloses a method, computer program product and system for discovering status of a network topology, comprising the steps of:

- presenting an interface having a menu, the menu having a plurality of alternative discovery methods (col. 5, lines 12-31);
- establishing an order in which the alternative discovery methods should be performed (col. 5, lines 22-31); and
- executing the alternative discovery methods in the established order (col. 5, lines 22-31).

As per claims 8, 25 and 36, Nelson discloses a method, computer program product and system for discovering status of a network topology, comprising the steps of:

- discovering a status for an existing network topology (col. 6, lines 17-34);
- determining a next discovery action based on an event (col. 7, lines 35-66); and
- determining, from a plurality of network access policies, a network access policy that is to be used when performing the next discovery action, the network access policy determination being based on a network response time, wherein the network response time is further based on at least one of a previous status of the existing network topology and a discovery event (col. 8, lines 13-31).

As per claims 2 and 19, Nelson further discloses:

- maintaining a record of devices in the network which are discovered through a first discovery method (col. 8, lines 32-40); and

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- removing those devices in the record from discovery through a second discovery method (col. 8, lines 32-40).

As per claims 3 and 20, Nelson further discloses:

- maintaining a dynamically gathered record of devices which are compliant to at least one of a first discovery method and a second discovery method (col. 8, lines 32-40); and
- using an appropriate discovery method according the record (col. 8, lines 41-60).

As per claims 4 and 21, Nelson further discloses:

- altering the established order the devices in the network according to a first number of devices compliant to the first discovery method and a second number of devices compliant to the second discovery method according the record (col. 8, lines 41-60).

As per claims 5 and 22, Nelson discloses:

- wherein the alternative discovery methods that are executed in the established order are at least one of a simple network management protocol (SNMP), an Internet protocol packet Internet Groper (IP ping), a point-to-point over Ethernet (PPPoE), and a dynamic host configuration protocol (DHCP) (col. 4, lines 56-63, col. 5, lines 22-31 and col. 6, lines 55-62).

As per claims 6 and 23, Nelson further discloses:

- modifying the established order of the alternative discovery methods based on a predetermined criteria (col. 6, lines 45-62).

As per claims 7 and 24, Nelson further discloses:

- enabling a mixture of the alternative discovery methods (col. 6, lines 45-62).

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As per claims **9** and **26**, Nelson discloses:

- wherein the event is one of a data gathering event, a discovery event and a configuration event (col. 2, lines 10-23, lines 33-42 and col. 5, lines 22-31)

As per claims **10** and **27**, Nelson discloses:

- wherein determining the policy based on a network response time is determined by count of devices within the network (col. 8, lines 14-31)

As per claims **11** and **28**, Nelson discloses:

- wherein determining the policy based on a network response time is determined by relative abilities of devices in the network (col. 8, lines 14-31).

As per claims **12** and **29**, Nelson further discloses:

- storing the status for the existing network topology (col. 7, lines 16-34)
- developing an order of relative capabilities for a managed device as compared to other device or devices in the network (col. 8, lines 14-31).

As per claims **13** and **30**, Nelson discloses:

- wherein discovering a status for an existing network topology further includes employing a single device status gathering technique if count of devices left to discover is less than a predetermined amount (col. 7, lines 16-34 and lines 55-66).

As per claims **14** and **31**, Nelson discloses:

- wherein the status gathering technique is an Internet protocol packet Internet Groper (IP ping) (col. 5, lines 22-31 and col. 6, lines 46-54)

As per claims **15** and **32**, Nelson discloses:

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- wherein discovering a status for an existing network topology further includes employing a multiple device status gathering technique if a count of devices left to discover is more than a predetermined amount ((col. 7, lines 16-34 and lines 55-66)

As per claims **16** and **33**, Nelson discloses:

- wherein the status gathering technique is a simple network management protocol (SNMP) (col. 4, lines 18-25 and col. 6, lines 55-62)

As per claims **17** and **34**, Nelson discloses:

- wherein discovering a status for an existing network topology includes determining a best order to discover the status for the existing network topology (col. 7, lines 16-34 and lines 55-66).

Response to Arguments

5. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,572,640 to Schettler

U.S. Pat. No. 6,829,641 to Schenkel

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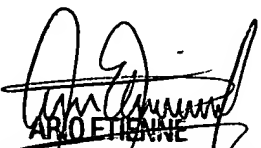
Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T Jacobs whose telephone number is 703-305-7494. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

ltj
April 27, 2005


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
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